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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FLORIDA CABLE  
TELECOMMUNICATIONS ASSOCIATION,  
INC., COX COMMUNICATIONS GULF  
COAST, L.L.C., *et. al.*

*Complainants,*

v.

GULF POWER COMPANY,

*Respondent.*

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MAR - 1 2006

Federal Communications Commission  
Office of Secretary

E.B. Docket No. 04-381

To: Office of the Secretary

Attn: The Honorable Richard L. Sippel  
Chief Administrative Law Judge

**COMPLAINANTS' MOTION FOR AN ORDER  
REGARDING GULF POWER'S FAILURE TO PRODUCE  
MATERIALS COVERED BY THE  
SCHEDULING ORDER OF DECEMBER 14, 2005 AND THE  
ADDENDUM ORDER OF DECEMBER 16, 2005**

The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, LLC ("Complainants"), following the parties' inability to agree to a joint order as directed by the Presiding Judge during the Conference Call held on February 15, 2006, respectfully move that the Presiding Judge adopt the attached proposed order (Exhibit A hereto) concerning Gulf Power's failure to produce, on February 10, 2006, materials covered by the Scheduling Order of December 14, 2005 and the Addendum Order of December 16, 2005.<sup>1</sup>

<sup>1</sup> Complainants note that Gulf also failed to produce a color photograph of ten of the fifty poles it identified, despite the Judge's order to produce such a photograph of all poles. Specifically, of the ten poles in Gulf Power's January 20, 2005 filing labeled "Knology" poles that were not surveyed by

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During the Conference Call of February 15, 2006, the Presiding Judge invited the parties to submit a joint order regarding Gulf Power's failure to produce materials specifically required by the Scheduling Order of December 14, 2005 and the Addendum Order of December 16, 2005. This has not been possible to achieve. Complainants respectfully submit the attached proposed order on their own behalf, because Complainants and Gulf Power have not been able to agree upon a joint order. In particular, Complainants sent Gulf Power a draft of a joint proposed order on February 17<sup>th</sup>. Gulf Power did not respond at all during the following week. On February 27<sup>th</sup>, Complainants notified Gulf Power that, having not received any response, they would proceed to file. Only after this notification did Gulf Power send a response to Complainants' draft proposed joint order.

However, Gulf proposed to delete all of Complainants' draft language and to substitute language that would largely avoid, and greatly limit the scope of, the consequences of Gulf Power's failure to meet the filing obligations of February 10<sup>th</sup> that were set forth in the Scheduling Order of December 14, 2005 and the Addendum Order of December 16, 2005. Accordingly, Complainants respectfully submit the attached proposed order, which simply seeks an Order precluding Gulf Power from later attempting to introduce any evidence in each of the categories specified by the Presiding Judge's orders of December 14<sup>th</sup> and 16<sup>th</sup> that it refused to produce on February 10<sup>th</sup> and which it claimed was "impossible" to find.

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Osmose, Gulf provided black and white photographs of five Knology poles and no photographs or data sheets specifically depicting the remaining five Knology poles.

Respectfully submitted,

  
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March 1, 2006

## EXHIBIT A

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FLORIDA CABLE  
TELECOMMUNICATIONS ASSOCIATION,  
INC., COX COMMUNICATIONS GULF  
COAST, L.L.C., *et. al.*

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*Respondent.*

E.B. Docket No. 04-381

## ORDER

1. On December 14, 2005, the Presiding Judge issued a Scheduling Order that, *inter alia*, required that, by January 20, 2006, "Gulf Power shall identify no more than fifty (50) poles that are alleged to be at 'full capacity' and which allegedly satisfy the requirements in Alabama Power." The Presiding Judge stated that such identification had to "include all documents and other records upon which Gulf Power relies to support its contentions, as well as location (including nearest street address), and color photograph of each pole." *Scheduling Order*, FCC 05M-60, 1 and n.2.
2. On December 16, 2005, in an Addendum to the Scheduling Order issued on December 14, 2005, FCC 05M-60, the Presiding Judge ordered that, as of February 10, 2006,

Gulf Power shall provide additional information to Complainants and the Bureau about such poles identified on January 20, and on January 27, including Gulf Power pole numbers; all documentation associated with the Osmose report that is applicable to such poles; identification of all entities attached to each pole; location above

ground level of all attachments on each pole; height, material and data of installation in the ground of each pole; copies of all make-ready (including 'change-out') documents involving each pole; copies of any accounting and/or cost records relating to such poles; and all records and/or a statement[] upon which Gulf Power relies to support its claim of a lost opportunity as to such poles.

3. On January 20, 2006, Gulf Power filed "Gulf Power's Fifty Pole Identification." That pleading identified 40 Gulf Power poles from the Osmose pole audit and 10 Gulf poles containing attachments from a company called "Knology" that Gulf Power contends had required make-ready work. Gulf Power provided color photographs of the 40 Osmose poles and provided black and white photographs of five "Knology" poles along with some associated "Knology" make-ready documents. Gulf Power also provided street addresses for the poles. Gulf Power did not provide any make-ready documents pertaining to the 40 Osmose poles or any accounting records, records of unreimbursed costs, or other records in support of its claim of lost opportunity on any pole.
4. On January 27, 2006, Complainants filed "Complainants' Identification of Utility Poles," which included color photographs and addresses of fifty poles selected by Complainants. On February 6, 2006, Complainants filed a "Correction" to their January 27<sup>th</sup> filing that included a photograph inadvertently omitted from the paper copy (but not the electronic copy) of their January 27<sup>th</sup> filing and which corrected an incorrect street address for one of their 50 poles.
5. On February 10, 2006, Gulf Power filed a pleading entitled "Gulf Power's Supplemental Filing Regarding Its Fifty Pole Identification." In that pleading, Gulf Power provided no new information on the 50 poles it had identified on January 20<sup>th</sup> (including no new information on make-ready, pole costs, or any information at all on alleged "lost opportunities" pertaining to such poles), and also took the position, with regard to its

obligation to provide information about poles identified by Complainants on January 27, 2006, that Gulf Power was unable “to respond and produce [the] several categories of information listed in the Addendum.” Gulf Power specifically claimed that information pertaining to poles Complainants had identified by photograph and street addresses was “impossible” to find. Gulf Power made this claim, even though it agreed, in the Joint Proposed Procedure for Further Proceedings and Hearing that was filed by the parties on December 9, 2005, that, like its own identification of poles on January 20th, Complainants’ identification of poles on January 27<sup>th</sup> would be accomplished by providing street addresses and color photographs.

6. Accordingly, except as stated in paragraphs 5 and 6 below, and with the exception of Osmose data produced to Complainants on or before January 20, 2006; make-ready documents specifically provided to and copied for Complainants on or before January 20, 2006;<sup>2</sup> and records relating to pole costs specifically provided to and copied for Complainants on or before January 20, 2006, Gulf Power will be precluded from affirmatively relying upon in testimony from witnesses or experts or introducing into evidence at the hearing commencing April 24, 2006, documents that are encompassed within the December 16, 2005 Addendum, including (1) any other documentation associated with the Osmose pole survey; (2) any other make-ready documents, (3) any other accounting and/or cost records, and (4) any records or statement upon which Gulf Power might rely to support its claim of a lost opportunity as to any poles, including those designated by Gulf Power or Complainants.

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<sup>2</sup> Gulf Power may not introduce at the hearing documents that it claims to have “made available” to Complainants but which have not been specifically identified previously and copied for Complainants.

7. In its February 10<sup>th</sup> “Supplemental Filing,” Gulf Power represented that it “intend[s] for Osmose to measure the poles [C]omplainants identified.” Accordingly, Gulf Power is ordered to produce to Complainants, within ten days of the release of this Order, the results of, and any documents pertaining to, Osmose’s measurements of poles designated by Complainants on January 27, 2006.
8. Gulf Power is also ordered to provide, within ten days of the release of this order, the results of, and any documents pertaining to, any measurements by Osmose of the (10) ten poles Gulf Power designated on January 20, 2006 as “Knology”-related poles. In addition, whether or not Gulf decides to have Osmose survey the ten Knology poles, Gulf is ordered to provide Complainants with color photographs of the ten Knology poles listed in Exhibit B to its January 20<sup>th</sup> filing within ten days of the release of this order.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel  
Chief Administrative Law Judge

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, *Complainants' Motion For An Order Regarding Gulf Power's Failure to Produce Materials Covered By The Scheduling Order Of December 14, 2005 And The Addendum Order Of December 16, 2005*, has been served upon the following by electronic mail and U.S. Mail on this the 1st day of March, 2006:

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